

<b>D'Artagnan, LLC v Sprinklr Inc.</b>
2019 NY Slip Op 33027(U)
October 10, 2019
Supreme Court, New York County
Docket Number: 653259/2018
Judge: Melissa A. Crane
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 15

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D'ARTAGNAN, LLC,

Plaintiff,

Index No.: 653259/2018

-against-

Mot. Seq. No. 001

SPRINKLR INC.,

Defendant.

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MELISSA A. CRANE, J.S.C.:

Plaintiff, D'Artagnan, LLC, is a leading purveyor of antibiotic-free, natural, and free-range organic meats, foie gras, pates, sausages, mushrooms, game and poultry in the United States. Defendant, Sprinklr, Inc, is a marketing firm that focuses on social media management services. It sells a licensed software application that allows clients to listen to what people are posting on social media about them. With that information, the client can target or aim online advertising to individuals found through the social media platform. According to its website, "Sprinklr is the most complete social media management system for the enterprise [that helps] the world's largest brands do marketing, advertising, care, sales, research, and commerce on Facebook, Twitter, LinkedIn, and 21 other channels globally--all on one integrated platform" (Complaint ¶ 5).

In early 2017, plaintiff sought to improve its marketing strategy through social media listening and monitoring. It expressed interest in defendant's software product. D'Artagnan and Sprinklr began negotiations. Plaintiff wanted to know if the software would allow plaintiff to perform direct ("1x1") targeting through social media channels like Facebook and Instagram. From the beginning, plaintiff told defendant it did not want to create a general public relations

and branding initiative, but rather, to expand direct target advertising capabilities (Complaint ¶ 7).

D'Artagnan and Sprinklr representatives met at D'Artagnan's New Jersey headquarters. Andy Wertheim, D'Artagnan's president, attended those meetings. From March 2017 to May 2017, Adeline Crites-More, D'Artagnan's social media manager, and Arthur Leopold, Sprinklr's Enterprise Sales Manager, emailed about what defendant's software could and could not do.

**On Fri, Mar 24, 2017 at 3:02PM, Adeline Crites-Moore**

**<adelinec@dartagnan.com> wrote:**

Hi Arthur...let's say I have a post on Facebook that got 100 "likes." Can Sprinklr pull the "likers" into a bucket? Can it pull the people who SAW it but didn't interact with it into a bucket? (I'm guessing no for that one...)

Can we do any targeting of the people who liked that specific post, or figure out how the demographics of the people liking the post compare to people who have liked other posts?

**On Fri March 24, 2017 at 3:25PM, Arthur Leopold**

**<arthur.leopold@sprinklr.com> wrote:**

I have good news for you and Andy. :) We can create custom audiences based on *any* engagement with your posts – this is how we map the customer journey and convert people from the awareness stage to education and then to become a D'Artagnan customer.

...if someone **likes** your content you can bucket/segment them to target them in the future based on what they liked or create a lookalike audience based on their network. If they **view your paid content**, then that counts as an impression and we can map that individual as well, to influence their buying journey...

(see NYSCEF edoc 19, Adeline Crites-Moore Aff in Opp to Motion, Exh A).

**On Tue, May 9, 2017 at 12:49PM, Adeline Crites-Moore**

**<adelinec@dartagnan.com> wrote:**

I have a few questions regarding specific advertising scenarios:

1. Let's say we use Sprinklr to find 20 people (I'm using this number arbitrarily) who say they are chefs in their bio on twitter or Pinterest in Houston, and they're talking about foie gras (assuming we can filter that way, yes?). Can we put them in a bucket and advertise to that exact list of people?

2. Let's say we take a list of prospects from sales people who have the email addresses and social handles of 20 prospects. Can we import that list into Sprinklr and serve ads directly to them?
3. Let's say we find 20 people who have posted something on Instagram with the hashtag #pigroast. Can we put them in a bucket and serve ads directly to them?
4. Let's say we have a new restaurant client. Can we serve ads to everyone who follows their account or, in the case of Facebook, everyone who "likes" their company page?

**On Tue, May 9, 2017 at 3:01PM, Arthur Leopold**

**<arthur.leopold@sprinklr.com> wrote:**

I circled up with our advertising team for the following answers:

- 1 & 2. Yes, you can do this subject to platform audience limits. For Facebook/Insta you need at least 20 minimum matched profiles and for Twitter, 500 matched profiles.
3. On Twitter, yes. **Instagram & Facebook privacy laws are stricter and introduce a black box when it comes to targeting.** Meaning that you could target those who have used the keyword or hashtag or have attended a pig roast before, in a specific area. However, **FB and Insta don't allow direct targeting to that exact person per say [sic] because they want their audiences to be broader.** With that said, it's highly likely that that individual would receive the ads.
4. Yes. You can apply interest targeting around a specific place, brand or topic to reach folks who have liked that account, @ mentioned them or commented on their content, etc.  
(see NYSCEF edoc 8, Rooney Aff in Support, Exh A).

D'Artagnan's discussion with Sprinklr continued through June 2017. After months of conversations with Sprinklr, on June 2, 2017, D'Artagnan entered into a License, a Master Services Agreement (the "Agreement") and Statement of Work ("SOW") (collectively referred to as, the "contract") (Complaint ¶ 12). The contract outlined the services Sprinklr would provide and described the functions of the licensed platform.

On July 6, 2017, after entering into the contract, D'Artagnan paid Sprinklr \$168,215. A subsequent refund for an unordered service reduced D'Artagnan's net payment to \$160,055. By August 2017, D'Artagnan realized that Sprinklr's platform did not permit direct targeting to Facebook and Instagram users through hashtags or posts. Plaintiff allegedly approached defendant about this problem, and Sprinklr allegedly "conceded that its sales representative had miscommunicated its Facebook and Instagram capabilities" (Complaint ¶ 14). Sprinklr's software could target 1x1 on Twitter, but could only create look-alike audiences and target its advertisements to the look-alikes on Facebook and Instagram

Sprinklr refused to modify its contract with D'Artagnan. Thus, in June 2018, D'Artagnan commenced this lawsuit against Sprinklr. Plaintiff seeks to recover under a theory of fraudulent inducement, negligent misrepresentation, breach of contract, unjust enrichment, declaratory judgment, and pursuant to the New Jersey Consumer Fraud Act ("NJCFCA"). Defendant, Sprinklr, Inc., moves, pursuant to CPLR 3211 (a)(2) and (a)(7), to dismiss plaintiff's complaint.

Contrary to plaintiff's allegations, defendant did not represent to plaintiff that its software could directly target Facebook and Instagram users. In fact, defendant made the opposite representation. The May 9, 2017 email, that defendant sent to plaintiff a month prior to entering into the contract, explicitly states that Facebook and Instagram's privacy policies prevented direct targeting on Facebook and Instagram platforms:

**<arthur.leopold@sprinklr.com> wrote:**

3 On Twitter, yes. **Instagram & Facebook privacy laws are stricter and introduce a black box when it comes to targeting.** Meaning that you could target those who have used the keyword or hashtag or have attended a pig roast before, in a specific area. However, **FB and Insta don't allow direct targeting to that exact person per say [sic] because they want their audiences to be broader.** With that said, it's highly likely that that individual would receive the ads.

(see NYSCEF edoc 8, Rooney Aff in Support, Exh A, *emphasis added*).

Plaintiff's reading of the May 9<sup>th</sup> emails is unreasonable. Nowhere does Leopold state that Sprinklr's software could put Facebook and Instagram users in buckets and then directly target those customers.

**<adelinec@dartagnan.com> wrote:**

1. Let's say we use Sprinklr to find 20 people (I'm using this number arbitrarily) who say they are chefs in their bio on *twitter or Pinterest* in Houston, and they're talking about foie gras (assuming we can filter that way, yes?). Can we put them in a bucket and advertise to that exact list of people?

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(see NYSCEF edoc 8, Rooney Aff in Support, Exh A).

**<arthur.leopold@sprinklr.com> wrote:**

1 & 2. Yes, you can do this subject to platform audience limits. For Facebook/Insta you need at least 20 minimum matched profiles and for Twitter, 500 matched profiles.  
(see NYSCEF edoc 8, Rooney Aff in Support, Exh A) (*emphasis added*).

Leopold's response combines Crites-More's Questions 1 and 2. Crites-More's first question talks about direct targeting, but only as to Twitter and Pinterest platforms. Leopold confirms that Sprinklr's software can perform 1x1 targeting on Twitter and Pinterest. He then addresses Crites-More's second question. No reasonable person would read Leopold's response to Crites-More's Question 2, that "for Facebook/Insta you need at least 20 minimum matched profiles....," as a representation that Sprinklr could directly target individual Facebook and Instagram users *without* email addresses, especially as Leopold also warned that "Instagram & Facebook privacy laws are stricter and introduce a black box when it comes to targeting" and "FB and Insta don't allow direct targeting to that *exact* person per say [*sic*]." If plaintiff, a

sophisticated party, did not understand the May 9, 2017 email response, it should have asked for clarification.<sup>1</sup>

Moreover, the contract contains a merger clause that bars the fraud and negligent misrepresentation causes of action. The Agreement's merger clause states:

***Subsection 10.1:***

This Agreement incorporates any exhibits, appendices and other documents referred to in it, including, but not limited to, the Acceptable Use Policy, the SLA and/or, if applicable, any data processing Agreement. This Agreement together with each Order Form and/or, SOW is the entire agreement between the parties relating to this subject matter, and supersedes (i) any pre-printed terms on a purchase order, which shall have no effect, and (ii) all prior or contemporaneous understandings of the parties related thereto, including any separate non-disclosure agreement between the parties relating to this subject matter as it relates to confidential information disclosed after the date of and pursuant to this Agreement. This Agreement, any Order Form and SOW may be amended or any right waived only in writing signed by the parties.

(see NYSCEF edoc 12, Rooney Aff in Support, Exh E).

The merger clause refers to the Statement of Work, that, in relevant part, reads:

**Configure the Sprinklr Ads Reporting Platform:**

The Sprinklr Implementation Team will work with Customer to define a Sprinklr configuration of Paid Reporting based on best practices and Customer requirements. The platform setup will include...

Adding up to 20 Ads accounts in total across the following

Available platforms:

- Facebook
- Instagram
- Twitter
- LinkedIn
- Pinterest
- Yahoo Gemini

(see NYSCEF edoc 11, Rooney Aff in Support, Exh D).

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<sup>1</sup> To the extent that plaintiff reads the March 24, 2017 email to mean that defendant could directly target Facebook and Instagram users without having their emails, the reading is unreasonable. The May 9, 2017 email supersedes the March 24, 2017 email, and explicitly states that direct targeting is not possible on Facebook and Instagram.

That the SOW states that Sprinklr “will work with Customer to define a Sprinklr configure of Paid Reporting based on best practices and Customer requirements...across the following available platforms...Facebook...Instagram,” does not mean Sprinklr can directly target Facebook and Instagram users without emails. Rather, configuration of an Ads Reporting Platform suggests that Sprinklr will provide information as to how the ads performed on that social media channel. It is irrelevant to direct advertising capabilities.

Accordingly, it is

**ORDERED** that the court grants defendant’s motion to dismiss.

The Clerk is directed to enter judgment dismissing the complaint.

Dated: 10-10-2019

ENTER:

  
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HON. MELISSA A. CRANE, J.S.C.

**HON. MELISSA A. CRANE**